



Rep. Carol A. Sente

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09800HB5523ham002

LRB098 17373 RLC 57383 a

1 AMENDMENT TO HOUSE BILL 5523

2 AMENDMENT NO. _____. Amend House Bill 5523, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Criminal Code of 2012 is amended by
6 changing Sections 36-1, 36-1.5, 36-2, and 36-5 as follows:

7 (720 ILCS 5/36-1) (from Ch. 38, par. 36-1)

8 Sec. 36-1. Seizure.

9 (a) Any vessel, vehicle, or aircraft may be seized and
10 impounded by the law enforcement agency if the vessel, vehicle,
11 or aircraft is used with the knowledge and consent of the owner
12 in the commission of, or in the attempt to commit as defined in
13 Section 8-4 of this Code, an offense prohibited by:

14 (1) ~~(a)~~ Section 9-1 (first degree murder, 720 ILCS
15 5/9-1), 9-3 (involuntary manslaughter and reckless
16 homicide, 720 ILCS 5/9-3), 10-2 (aggravated kidnaping, 720

1 ILCS 5/10-2), 11-1.20 (criminal sexual assault, 720 ILCS
2 5/11-1.20), 11-1.30 (aggravated criminal sexual assault,
3 720 ILCS 5/11-1.30), 11-1.40 (predatory criminal sexual
4 assault of a child, 720 ILCS 5/11-1.40), subsection (a) of
5 Section 11-1.50 (criminal sexual abuse, 720 ILCS 5/11-1.50
6 (a)), subsection (a), (c), or (d) of Section 11-1.60
7 (aggravated criminal sexual abuse, 720 ILCS 5/11-1.60 (a),
8 (c), or (d)), Section 11-6 (indecent solicitation of a
9 child, 720 ILCS 5/11-6), 11-14.4 (promoting juvenile
10 prostitution, 720 ILCS 5/11-14.4) except for keeping a
11 place of juvenile prostitution, ~~11-15.1, 11-19.1, 11-19.2,~~
12 11-20.1 (child pornography, 720 ILCS 5/11-20.1), paragraph
13 (a) (1), (a) (2), (a) (4), (b) (1), (e) (1), (e) (2), (e) (3),
14 (e) (4), (e) (5), (e) (6), or (e) (7) of Section 12-3.05
15 (aggravated battery, 12-3.05(a) (1), (a) (2), (a) (4),
16 (b) (1), (e) (1), (e) (2), (e) (3), (e) (4), (e) (5), (e) (6), or
17 (e) (7)), ~~11-20.1B, 11-20.3, 12-4.1, 12-4.2, 12-4.2 5,~~
18 ~~12-4.3, 12-4.6,~~ 12-7.3 (stalking, 720 ILCS 5/12-7.3),
19 12-7.4 (aggravated stalking, 720 ILCS 5/12-7.4), ~~12-13,~~
20 ~~12-14,~~ 16-1 (theft, 720 ILCS 5/16-1) if the theft is of
21 precious metal or of scrap metal, subdivisions (f) (2) or
22 (f) (3) of Section 16-25 (retail theft, 720 ILCS 5/16-25
23 (f) (2) or (f) (3), Section 18-2 (armed robbery, 720 ILCS
24 5/18-2), 19-1 (burglary, 720 ILCS 5/19-1), 19-2
25 (possession of burglary tools, 720 ILCS 5/19-2), 19-3
26 (residential burglary, 720 ILCS 5/19-3), 20-1 (arson;

1 residential arson; place of worship arson, 720 ILCS
2 5/20-1), 20-2 (possession of explosives or explosive or
3 incendiary devices, 720 ILCS 5/20-2), subdivision (a)(6)
4 or (a)(7) of Section 24-1 (unlawful use of weapons, 720
5 ILCS 5/24-1(a)(6) or (a)(7)), Section, 24-1.2 (aggravated
6 discharge of a firearm, 720 ILCS 5/24-1.2), 24-1.2-5
7 (aggravated discharge of a machine gun or a firearm
8 equipped with a device designed or used for silencing the
9 report of a firearm, 720 ILCS 5/24-1.2-5), 24-1.5 (reckless
10 discharge of a firearm, 720 ILCS 5/24-1.5), 28-1 (gambling,
11 720 ILCS 5/28-1), or 29D-15.2 (possession of a deadly
12 substance, 720 ILCS 5/29D-15.2) of this Code; ~~subdivision~~
13 ~~(a)(1), (a)(2), (a)(4), (b)(1), (c)(1), (c)(2), (c)(3),~~
14 ~~(c)(4), (c)(5), (c)(6), or (c)(7) of Section 12-3.05,~~
15 ~~paragraph (a) of Section 12-4 of this Code, paragraph (a)~~
16 ~~of Section 11-1.50, paragraph (a) of Section 12-15,~~
17 ~~paragraph (a), (c), or (d) of Section 11-1.60, or~~
18 ~~paragraphs (a), (c) or (d) of Section 12-16 of this Code,~~
19 ~~or paragraph (a)(6) or (a)(7) of Section 24-1 of this Code;~~
20 (2) ~~(b)~~ Section 21, 22, 23, 24 or 26 of the Cigarette
21 Tax Act (35 ILCS 130/21, 22, 23, 24 or 26) if the vessel,
22 vehicle, or aircraft contains more than 10 cartons of such
23 cigarettes;
24 (3) ~~(c)~~ Section 28, 29, or 30 of the Cigarette Use Tax
25 Act (35 ILCS 135/28, 29, or 30) if the vessel, vehicle, or
26 aircraft contains more than 10 cartons of such cigarettes;

1 (4) ~~(d)~~ Section 44 of the Environmental Protection Act
2 (415 ILCS 5/44);

3 (5) ~~(e)~~ Section 11-204.1 of the Illinois Vehicle Code
4 (aggravated fleeing or attempting to elude a peace officer,
5 625 ILCS 5/11-204.1);

6 (6) Section 11-501 of the Illinois Vehicle Code
7 (driving while under the influence of alcohol or other drug
8 or drugs, intoxicating compound or compounds or any
9 combination thereof) or a similar provision of a local
10 ordinance , and:

11 ~~(f) (1) driving under the influence of alcohol or other drug or~~
12 ~~drugs, intoxicating compound or compounds or any~~
13 ~~combination thereof under Section 11-501 of the~~
14 ~~Illinois Vehicle Code during a period in which~~

15 (A) during a period in which his or her driving
16 privileges are revoked or suspended if ~~where~~ the
17 revocation or suspension was for:

18 (i) driving under the influence of alcohol or
19 other drug or drugs, intoxicating compound or
20 compounds or any combination thereof (625 ILCS
21 5/11-501),

22 (ii) Section 11-501.1 (625 ILCS 5/11-501.1),

23 (iii) paragraph (b) of Section 11-401 (625
24 ILCS 5/11-401(b)), or ~~for~~

25 (iv) reckless homicide as defined in Section
26 9-3 of the Criminal Code of 1961 or the Criminal

1 Code of 2012 (720 ILCS 5/9-3);

2 (B) ~~(2) driving while under the influence of~~
3 ~~alcohol, other drug or drugs, intoxicating compound or~~
4 ~~compounds or any combination thereof and~~ has been
5 previously convicted of reckless homicide or a similar
6 provision of a law of another state relating to
7 reckless homicide in which the person was determined to
8 have been under the influence of alcohol, other drug or
9 drugs, or intoxicating compound or compounds as an
10 element of the offense or the person has previously
11 been convicted of committing a violation of driving
12 under the influence of alcohol or other drug or drugs,
13 intoxicating compound or compounds or any combination
14 thereof and was involved in a motor vehicle accident
15 that resulted in death, great bodily harm, or permanent
16 disability or disfigurement to another, when the
17 violation was a proximate cause of the death or
18 injuries;

19 (C) ~~(3)~~ the person committed a violation of driving
20 under the influence of alcohol or other drug or drugs,
21 intoxicating compound or compounds or any combination
22 thereof under Section 11-501 of the Illinois Vehicle
23 Code or a similar provision for the third or subsequent
24 time;

25 (D) ~~(4) the person committed the violation while he~~
26 or she did not possess a valid driver's license or

1 permit or a valid restricted driving permit or a valid
2 judicial driving permit or a valid monitoring device
3 driving permit; or

4 (E) ~~(5) the person committed the violation while he~~
5 ~~or she knew or should have known that the vehicle he or~~
6 ~~she was driving was not covered by a liability~~
7 ~~insurance policy;~~

8 (7) ~~(g)~~ an offense described in subsection (g) of
9 Section 6-303 of the Illinois Vehicle Code (625 ILCS 5/
10 6-303(g); or

11 (8) ~~(h)~~ an offense described in subsection (e) of
12 Section 6-101 of the Illinois Vehicle Code (625 ILCS
13 5/6-101). ~~may be seized and delivered forthwith to the~~
14 ~~sheriff of the county of seizure.~~

15 ~~Within 15 days after such delivery the sheriff shall give~~
16 ~~notice of seizure to each person according to the following~~
17 ~~method: Upon each such person whose right, title or interest is~~
18 ~~of record in the office of the Secretary of State, the~~
19 ~~Secretary of Transportation, the Administrator of the Federal~~
20 ~~Aviation Agency, or any other Department of this State, or any~~
21 ~~other state of the United States if such vessel, vehicle or~~
22 ~~aircraft is required to be so registered, as the case may be,~~
23 ~~by mailing a copy of the notice by certified mail to the~~
24 ~~address as given upon the records of the Secretary of State,~~
25 ~~the Department of Aeronautics, Department of Public Works and~~
26 ~~Buildings or any other Department of this State or the United~~

1 ~~States if such vessel, vehicle or aircraft is required to be so~~
2 ~~registered. Within that 15 day period the sheriff shall also~~
3 ~~notify the State's Attorney of the county of seizure about the~~
4 ~~seizure.~~

5 (b) In addition, any mobile or portable equipment used in
6 the commission of an act which is in violation of Section 7g of
7 the Metropolitan Water Reclamation District Act (70 ILCS
8 2605/7g) shall be subject to seizure and forfeiture under the
9 same procedures provided in this Article for the seizure and
10 forfeiture of vessels, vehicles, and aircraft, and any such
11 equipment shall be deemed a vessel, vehicle, or aircraft for
12 purposes of this Article.

13 (c) In addition, when ~~When~~ a person discharges a firearm at
14 another individual from a vehicle with the knowledge and
15 consent of the owner of the vehicle and with the intent to
16 cause death or great bodily harm to that individual and as a
17 result causes death or great bodily harm to that individual,
18 the vehicle shall be subject to seizure and forfeiture under
19 the same procedures provided in this Article for the seizure
20 and forfeiture of vehicles used in violations of clauses (1),
21 (2), (3), or (4) of subsection (a) ~~(a), (b), (c), or (d)~~ of
22 this Section.

23 (d) If the spouse of the owner of a vehicle seized for an
24 offense described in subsection (g) of Section 6-303 of the
25 Illinois Vehicle Code, a violation of subdivision (d)(1)(A),
26 (d)(1)(D), (d)(1)(G), (d)(1)(H), or (d)(1)(I) of Section

1 11-501 of the Illinois Vehicle Code, or Section 9-3 of this
2 Code makes a showing that the seized vehicle is the only source
3 of transportation and it is determined that the financial
4 hardship to the family as a result of the seizure outweighs the
5 benefit to the State from the seizure, the vehicle may be
6 forfeited to the spouse or family member and the title to the
7 vehicle shall be transferred to the spouse or family member who
8 is properly licensed and who requires the use of the vehicle
9 for employment or family transportation purposes. A written
10 declaration of forfeiture of a vehicle under this Section shall
11 be sufficient cause for the title to be transferred to the
12 spouse or family member. The provisions of this paragraph shall
13 apply only to one forfeiture per vehicle. If the vehicle is the
14 subject of a subsequent forfeiture proceeding by virtue of a
15 subsequent conviction of either spouse or the family member,
16 the spouse or family member to whom the vehicle was forfeited
17 under the first forfeiture proceeding may not utilize the
18 provisions of this paragraph in another forfeiture proceeding.
19 If the owner of the vehicle seized owns more than one vehicle,
20 the procedure set out in this paragraph may be used for only
21 one vehicle.

22 (e) In addition, property ~~Property~~ declared contraband
23 under Section 40 of the Illinois Streetgang Terrorism Omnibus
24 Prevention Act (740 ILCS 147/40) may be seized and forfeited
25 under this Article.

26 (Source: P.A. 96-313, eff. 1-1-10; 96-710, eff. 1-1-10;

1 96-1000, eff. 7-2-10; 96-1267, eff. 7-26-10; 96-1289, eff.
2 1-1-11; 96-1551, Article 1, Section 960, eff. 7-1-11; 96-1551,
3 Article 2, Section 1035, eff. 7-1-11; 97-333, eff. 8-12-11;
4 97-1109, eff. 1-1-13; 97-1150, eff. 1-25-13.)

5 (720 ILCS 5/36-1.5)

6 Sec. 36-1.5. Preliminary Review.

7 (a) Within 14 days of the seizure, the State's Attorney in
8 the county in which the seizure occurred ~~State~~ shall seek a
9 preliminary determination from the circuit court as to whether
10 there is probable cause that the property may be subject to
11 forfeiture.

12 (b) The rules of evidence shall not apply to any proceeding
13 conducted under this Section.

14 (c) The court may conduct the review under subsection (a)
15 simultaneously with a proceeding pursuant to Section 109-1 of
16 the Code of Criminal Procedure of 1963 for a related criminal
17 offense if a prosecution is commenced by information or
18 complaint.

19 (d) The court may accept a finding of probable cause at a
20 preliminary hearing following the filing of an information or
21 complaint charging a related criminal offense or following the
22 return of indictment by a grand jury charging the related
23 offense as sufficient evidence of probable cause as required
24 under subsection (a).

25 (e) Upon making a finding of probable cause as required

1 under this Section, the circuit court shall order the property
2 subject to the provisions of the applicable forfeiture Act held
3 until the conclusion of any forfeiture proceeding.

4 For seizures of conveyances, within 7 days of a finding of
5 probable cause under subsection (a), the registered owner or
6 other claimant may file a motion in writing supported by sworn
7 affidavits claiming that denial of the use of the conveyance
8 during the pendency of the forfeiture proceedings creates a
9 substantial hardship. The court shall consider the following
10 factors in determining whether a substantial hardship has been
11 proven:

12 (1) the nature of the claimed hardship;

13 (2) the availability of public transportation or other
14 available means of transportation; and

15 (3) any available alternatives to alleviate the
16 hardship other than the return of the seized conveyance.

17 If the court determines that a substantial hardship has
18 been proven, the court shall then balance the nature of the
19 hardship against the State's interest in safeguarding the
20 conveyance. If the court determines that the hardship outweighs
21 the State's interest in safeguarding the conveyance, the court
22 may temporarily release the conveyance to the registered owner
23 or the registered owner's authorized designee, or both, until
24 the conclusion of the forfeiture proceedings or for such
25 shorter period as ordered by the court provided that the person
26 to whom the conveyance is released provides proof of insurance

1 and a valid driver's license and all State and local
2 registrations for operation of the conveyance are current. The
3 court shall place conditions on the conveyance limiting its use
4 to the stated hardship and restricting the conveyance's use to
5 only those individuals authorized to use the conveyance by the
6 registered owner. The court shall revoke the order releasing
7 the conveyance and order that the conveyance be resealed by law
8 enforcement if the conditions of release are violated or if the
9 conveyance is used in the commission of any offense identified
10 in subsection (a) of Section 6-205 of the Illinois Vehicle
11 Code.

12 If the court orders the release of the conveyance during
13 the pendency of the forfeiture proceedings, the registered
14 owner or his or her authorized designee shall post a cash
15 security with the Clerk of the Court as ordered by the court.
16 The court shall consider the following factors in determining
17 the amount of the cash security:

18 (A) the full market value of the conveyance;

19 (B) the nature of the hardship;

20 (C) the extent and length of the usage of the
21 conveyance; and

22 (D) such other conditions as the court deems necessary
23 to safeguard the conveyance.

24 If the conveyance is released, the court shall order that
25 the registered owner or his or her designee safeguard the
26 conveyance, not remove the conveyance from the jurisdiction,

1 not conceal, destroy, or otherwise dispose of the conveyance,
2 not encumber the conveyance, and not diminish the value of the
3 conveyance in any way. The court shall also make a
4 determination of the full market value of the conveyance prior
5 to it being released based on a source or sources defined in 50
6 Ill. Adm. Code 919.80(c)(2)(A) or 919.80(c)(2)(B).

7 If the conveyance subject to forfeiture is released under
8 this Section and is subsequently forfeited, the person to whom
9 the conveyance was released shall return the conveyance to the
10 law enforcement agency that seized the conveyance within 7 days
11 from the date of the declaration of forfeiture or order of
12 forfeiture. If the conveyance is not returned within 7 days,
13 the cash security shall be forfeited in the same manner as the
14 conveyance subject to forfeiture. If the cash security was less
15 than the full market value, a judgment shall be entered against
16 the parties to whom the conveyance was released and the
17 registered owner, jointly and severally, for the difference
18 between the full market value and the amount of the cash
19 security. If the conveyance is returned in a condition other
20 than the condition in which it was released, the cash security
21 shall be returned to the surety who posted the security minus
22 the amount of the diminished value, and that amount shall be
23 forfeited in the same manner as the conveyance subject to
24 forfeiture. Additionally, the court may enter an order allowing
25 any law enforcement agency in the State of Illinois to seize
26 the conveyance wherever it may be found in the State to satisfy

1 the judgment if the cash security was less than the full market
2 value of the conveyance.

3 (Source: P.A. 97-544, eff. 1-1-12; 97-680, eff. 3-16-12.)

4 (720 ILCS 5/36-2) (from Ch. 38, par. 36-2)

5 Sec. 36-2. Action for forfeiture.

6 (a) The State's Attorney in the county in which such
7 seizure occurs if he or she finds that the ~~such~~ forfeiture was
8 incurred without willful negligence or without any intention on
9 the part of the owner of the vessel, vehicle or aircraft or any
10 person whose right, title or interest is of record as described
11 in Section 36-1, to violate the law, or finds the existence of
12 such mitigating circumstances as to justify remission of the
13 forfeiture, may cause the law enforcement agency ~~sheriff~~ to
14 remit the same upon such terms and conditions as the State's
15 Attorney deems reasonable and just. The State's Attorney shall
16 exercise his or her discretion under the foregoing provision of
17 this Section 36-2(a) prior to or promptly after the preliminary
18 review under Section 36-1.5 ~~notice is given in accordance with~~
19 ~~Section 36-1.~~

20 (b) If the State's Attorney does not cause the forfeiture
21 to be remitted he or she shall forthwith bring an action for
22 forfeiture in the Circuit Court within whose jurisdiction the
23 seizure and confiscation has taken place. The State's Attorney
24 shall give notice of seizure and the forfeiture proceeding to
25 each person according to the following method: Upon each person

1 whose right, title, or interest is of record in the office of
2 the Secretary of State, the Secretary of Transportation, the
3 Administrator of the Federal Aviation Agency, or any other
4 Department of this State, or any other state of the United
5 States if the vessel, vehicle, or aircraft is required to be so
6 registered, as the case may be, by delivering the notice and
7 complaint in open court or by certified mail to the address as
8 given upon the records of the Secretary of State, the Division
9 of Aeronautics of the Department of Transportation, the Capital
10 Development Board, or any other Department of this State or the
11 United States if the vessel, vehicle, or aircraft is required
12 to be so registered ~~the forfeiture proceeding by mailing a copy~~
13 ~~of the Complaint in the forfeiture proceeding to the persons,~~
14 ~~and upon the manner, set forth in Section 36-1.~~

15 (c) The owner of the seized vessel, vehicle, or aircraft or
16 any person whose right, title, or interest is of record as
17 described in Section 36-1, may within 20 days after delivery in
18 open court or the mailing of such notice file a verified answer
19 to the Complaint and may appear at the hearing on the action
20 for forfeiture.

21 (d) The State shall show at such hearing by a preponderance
22 of the evidence, that such vessel, vehicle, or aircraft was
23 used in the commission of an offense described in Section 36-1.

24 (e) The owner of such vessel, vehicle, or aircraft or any
25 person whose right, title, or interest is of record as
26 described in Section 36-1, may show by a preponderance of the

1 evidence that he did not know, and did not have reason to know,
2 that the vessel, vehicle, l or aircraft was to be used in the
3 commission of such an offense or that any of the exceptions set
4 forth in Section 36-3 are applicable.

5 (f) Unless the State shall make such showing, the Court
6 shall order such vessel, vehicle, l or aircraft released to the
7 owner. Where the State has made such showing, the Court may
8 order the vessel, vehicle, l or aircraft destroyed or may order
9 it forfeited ~~delivered~~ to any local, municipal or county law
10 enforcement agency, or the Department of State Police or the
11 Department of Revenue of the State of Illinois; ~~or may order it~~
12 ~~sold at public auction.~~

13 (g) ~~(b)~~ A copy of the order shall be filed with the law
14 enforcement agency, ~~sheriff of the county in which the seizure~~
15 ~~occurs~~ and with each Federal or State office or agency with
16 which such vessel, vehicle, l or aircraft is required to be
17 registered. Such order, when filed, constitutes authority for
18 the issuance of clear title to such vessel, vehicle, or
19 aircraft, ~~or boat~~ to the department or agency to whom it is
20 delivered or any purchaser thereof. The law enforcement agency
21 ~~sheriff~~ shall comply promptly with instructions to remit
22 received from the State's Attorney or Attorney General in
23 accordance with Sections 36-2(a) or 36-3.

24 (h) ~~(e)~~ The proceeds of any sale at public auction pursuant
25 to Section 36-2 of this Act, after payment of all liens and
26 deduction of the reasonable charges and expenses incurred by

1 the State's Attorney's Office ~~sheriff in storing and selling~~
2 ~~such vehicle,~~ shall be paid to ~~into~~ the law enforcement agency
3 having seized the vehicle for forfeiture ~~general fund of the~~
4 ~~county of seizure.~~

5 (Source: P.A. 84-25.)

6 (720 ILCS 5/36-5)

7 Sec. 36-5. The law enforcement agency, County or sheriff
8 not liable for stored forfeited vehicle. A law enforcement
9 agency, county, sheriff, law enforcement officer or employee of
10 the law enforcement agency or ~~deputy sheriff, or employee of~~
11 ~~the~~ county sheriff shall not be civilly or criminally liable
12 for any damage to a forfeited vehicle stored with a commercial
13 vehicle safety relocater.

14 (Source: P.A. 96-1274, eff. 7-26-10.)

15 Section 99. Effective date. This Act takes effect upon
16 becoming law."